

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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| UNITED STATES OF AMERICA |) | |
| |) | |
| V. |) | Crim. No. 15-cr-10271-WGY |
| |) | |
| ALEX LEVIN |) | |
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**DEFENDANT’S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
MOTION *IN LIMINE* TO EXCLUDE GOVERNMENT EVIDENCE DUE TO
FAILURE TO TIMELY DISCLOSE**

The defendant, Alex Levin, submits this supplement in support of his motion to exclude government evidence due to its failure to timely disclose. Dkt. 158. The defendant offers this supplement in order to expand upon the points made in the initial motion.

The defendant has moved to exclude all evidence provided by the government on or after May 13, 2019. The timeline of events in this case is as follows:

| Date | Event |
|--------------------|--|
| August 12, 2015 | The defendant is arrested at his home in Norwood, MA by federal agents following the discovery of child pornography on one of his laptops. The affidavit submitted in support of the criminal complaint identifies the child pornography as seven videos and one still image. He appeared before a magistrate judge later that day and was detained. |
| August 17, 2015 | The defendant’s detention hearing is held. During his testimony, Boston Police Detective Michael Sullivan testifies that seven video files and one still image of child pornography were found on the laptop. He indicates that the laptop and other electronic devices are undergoing further forensic examination. |
| September 17, 2015 | A federal grand jury indicts the defendant for a single count of possession of child pornography in violation of 18 U.S.C. § |

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| | 2252A(a)(5)(B). |
| October 26, 2015 | The government provides discovery to the defendant. The discovery includes search warrant documents, an audio recorded interview of the defendant, arrest reports, FBI CART reports, chain of custody documents, and U.S. Postal inspection documents. |
| November 1, 2015 | The government provides discovery to the defendant. The discovery includes an affidavit in support of a search warrant. |
| November 20, 2015 | The Court sets an initial trial date of April 4, 2016. A final pretrial conference is scheduled for March 7, 2016. |
| March 7, 2016 | The Court continues the trial date to June 13, 2016. The government is ordered to disclose documents pursuant to L.R. 116.1 by May 16, 2016, and to disclose its witnesses before June 6, 2016. |
| April 20, 2016 | The Court grants the defendant's motion to suppress evidence. |
| May 17, 2016 | The government files an interlocutory appeal of the Court's allowance of the motion to suppress. |
| May 18, 2016 | The Court cancels the June 13, 2016 trial date. |
| October 27, 2017 | The First Circuit Court of Appeals vacates the allowance of the motion to suppress. |
| December 5, 2017 | The Court sets a trial date of July 23, 2018. |
| April 18, 2018 | The defendant sends a letter to the government requesting additional discovery. This letter is appended as Exhibit 1. |
| June 13, 2018 | The Court grants the government's assented-to motion to continue the trial date. The trial is rescheduled for January 14, 2019. |
| August 3, 2018 | The defendant sends a second letter to the government requesting additional discovery. This letter is appended as Exhibit 2. |
| October 29, 2018 | The Court grants the defendant's motion to continue the trial date. The trial is rescheduled for May 20, 2019. The final pretrial conference is later scheduled for May 14, 2019. |
| December 14, 2018 | The defendant files a motion for discovery after the government fails to respond to either of the letters sent requesting additional information. |
| January 16, 2019 | The Court orders the government to provide certain items of discovery to the defendant. |
| February 7, 2019 | The government provides the ordered discovery to the defendant. |
| April 30, 2019 | Counsel for the defendant contacts the government concerning 21-day disclosures. |
| May 1, 2019 | The government indicates to the defendant by letter that it anticipates providing witness statements to the defendant prior to the May 14, 2019 final pretrial conference. The government also indicates that it expects to provide an exhibit list by May 6, 2019. |

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| | The government includes the CV of one of its witnesses with the letter. |
| May 13, 2019 | The defendant received an e-mail from the government at 10:31 P.M. The e-mail includes 45 pages of discovery, which includes screenshots of data from the defendant's computer. The screenshots indicate that there were in fact 13 video files of child pornography found on the computer. Counsel for the defendant is also informed that the screenshots indicate that 46 still images of child pornography were discovered. This marks the first time that the defendant was notified by the government as to the number of child pornography files that were discovered on the computer, as well as the locations of the files. |
| May 16, 2019 | The government sends additional discovery to the defendant. This includes a report of an examination of the defendant's computer conducted from May 6, 2019 to May 15, 2019. It also includes additional reports of tests recently conducted on the computer. |

The government has had nearly four years to disclose this evidence to the defendant. Instead, it chose to do so less than one week prior to trial. This case concerns complex issues of computer forensics. The defendant has been assisted by a computer forensic expert, Joseph Nicholls. However, less than one week is simply not enough time to completely review this materials, let alone do so to the extent required to effectively represent the defendant at trial. The proper remedy is for this Court to enter an order excluding all exhibits and information that the defendant was provided on or after May 13, 2019. Federal Rule of Criminal Procedure 16(d)(2)(C) grants the Court the discretion to exclude any late filed evidence. The defendant moves that the Court do so.

ALEX LEVIN
By his attorneys,
CARNEY & ASSOCIATES

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May 19, 2019

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on or before the above date.

J. W. Carney, Jr.

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**AFFIDAVIT SUPPORTING DEFENDANT'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF MOTION *IN LIMINE* TO EXCLUDE
GOVERNMENT EVIDENCE DUE TO FAILURE TO TIMELY DISCLOSE**

I, J. W. Carney, Jr., state that the facts contained in the attached motion are true to the best of my information and belief.

Signed under the penalties of perjury.

J. W. Carney, Jr.
J. W. Carney, Jr.

May 19, 2019